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## REGULATORY BULLETIN 2012-4<sup>1</sup>

**To:** Life and Disability Insurers, Health Care Services Organizations, Hospital, Medical, Dental and Optometric Service Corporations, Life and Health Insurance Administrators, Producers, Professional Associations and Interested Parties

**From:** Germaine Marks  
Director of Insurance

**Date:** December 21, 2012

**Re:** **Threshold Rate Increase Review**

### **Introduction**

The purpose of this Regulatory Bulletin is to notify regulated entities and other stakeholders that effective January 1, 2013, the Arizona Department of Insurance (the Department) will exercise its authority to review certain health insurance rate increases in the individual health insurance market, pursuant to Arizona Administrative Code ("ACC") Title 20, Chapter 6, Article 23, "Threshold Rate Review – Individual Health Insurance." The Bulletin also provides access to information about the Department's threshold rate review filing requirements and process.

### **Background**

The federal Affordable Care Act (the "ACA") requires a health insurer<sup>2</sup> seeking a rate increase at or over a certain threshold (a "threshold rate increase") to publicly disclose and justify the proposed increase. This requirement applies only to major medical coverage in the individual and small group markets and does not apply to grandfathered plans. The ACA also requires state or federal reviewers to determine whether a threshold rate increase is reasonable or unreasonable.<sup>3</sup>

On June 24, 2011, the federal Center for Consumer Information and Insurance

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<sup>1</sup> This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement imposes additional requirements or penalties on regulated parties, you may petition the agency under ARS § 41-1033 for review of the Statement.

<sup>2</sup> In this Regulatory Bulletin, the term "health insurer" means an entity with an Arizona certificate of authority as a disability insurer (ARS §§ 20-216 and 20-253), a hospital, medical or optometric service corporation (ARS § 20-825216) or a health care services organization (ARS § 20-1054).

<sup>3</sup> Sec 1003 of ACA established these requirements by adding a new Sec. 2794(a)(2) to the Public Health Services Act, codified at 42 USC § 300gg-94(a).

Oversight (CCIIO)<sup>4</sup> notified the Department that that Arizona did not meet CCIIO's requirements for conducting effective rate review of threshold rate increases (threshold rate review). Since September 1, 2011, CCIIO has reviewed the threshold rate increases that affect Arizona consumers in order to determine whether the increases were reasonable or unreasonable.

On December 19, 2012, CCIIO notified the Department that CCIIO has determined that Arizona now meets CCIIO's requirements for conducting threshold rate review increases in the individual health insurance market. CCIIO will continue to review threshold rate increases in the small group market but the Department will conduct the review of threshold rate increases in Arizona's individual health insurance market, including threshold rate increases affecting individual members of an association or trust. AAC R20-6-2301(B)(7).

### **Definition of "Threshold Rate Increase"**

Currently in Arizona a threshold rate increase is one in which the average increase for all enrollees weighted by premium volume is ten percent or more. AAC R20-6-2301(B)(13)(a). The threshold of ten percent is subject to change pursuant to AAC R20-6-2301(B)(13). A rate increase that does not by itself meet or exceed the threshold will be considered a threshold rate increase if it meets or exceeds the threshold when combined with a previous increase or increases during the 12 month period preceding the date on which the rate increase would become effective. AAC R20-6-2301(B)(13)(b).

### **Filing Requirements**

A health insurer must submit every individual threshold rate increase with ADOI before it implements the increase and may not implement the increase until ADOI determines whether the threshold rate increase is reasonable or unreasonable. AAC R20-6-2303. Health insurers must submit threshold rate review filings via SERFF. The Department's filing requirements for threshold rate review filings are available on SERFF as new section 5(c) of the Comments under the General Information tab and on the Department's website at [SERFF General Instructions.pdf](#). The Department's checklist of filing requirements is available on SERFF under the Requirements tab and on the Department's website at [Threshold Rate Review Checklist.pdf](#).

Arizona's threshold rate review requirements and process do not replace or in any way affect any other rate review requirements or process that applies to an individual rate increase. Specifically, ACC R20-6-607, "Reasonableness of Benefits in Relation to Premium Charged," is still in effect. A side-by-side explanation of filing requirements for ACC R20-6-607 filings and threshold rate increase filings is available in SERFF under the "Requirements" tab and on the Department website at [Side-by-Side Rate Review Requirements.pdf](#).

### **Threshold Rate Increase Review: Time Line and Process**

A health insurer submitting a threshold rate increase for review must submit the threshold rate increase filing 60 days prior to the date the insurer intends to implement the increase in Arizona. If the threshold rate increase is also subject to review under AAC R20-6-607, the health insurer must submit the threshold rate increase filing no later than the date the insurer submits the rate increase for review under AAC R20-6-607.

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<sup>4</sup> CCIIO is part of the Center for Medicaid and Medicare Services (CMS).

ADOI will make every reasonable effort to complete each threshold rate review within 60 days of receiving the filing but strongly encourages filers to submit threshold rate increase filings at least ninety days before the planned implementation date. There will not be a process for an expedited review of a threshold rate increase filing.

When the Department receives a threshold rate increase filing, Department staff will review the filing for administrative completeness. If the filing is administratively complete, the Department will refer it to a contracted external actuary to conduct the substantive review regarding the reasonableness of the rate increase. The actuary will conclude his or her review with a recommended determination either that the threshold rate increase is reasonable or that it is unreasonable. The actuary will provide the Department with an explanation of the reasonableness analysis he or she conducted under AAC R20-6-2305. As with other filings it reviews, the Department will make every reasonable effort to notify health insurers if the Department or the reviewing actuary have questions about a threshold rate increase filing and to give the health insurer an opportunity to correct any deficiencies identified during the review.

Within five days of making a final reasonableness determination, the Department will provide the determination to CCIO, in accordance with 45 CFR § 154.210(b)(2). The Department will notify the health insurer of its final determination at the same time the Department provides the determination to CMS. The Department's notice of final determination will include a brief explanation of how its analysis of the factors set forth in AAC R20-6-2305(B) caused it to arrive at its determination. A diagram/timeline for the Department's threshold rate increase review is available on SERFF as an attachment to "Comments" under the General Information tab and on the Department's website at [Threshold Rate Review Process Diagram.pdf](#).

An ADOI determination that a threshold rate increase is unreasonable does not prevent the insurer from implementing the increase but it triggers additional disclosure requirements in connection with the implementation. AAC R20-6-2403(3). A diagram/timeline showing the options available to an insurer if the Department determines that a threshold rate increase is unreasonable is available on SERFF as an attachment to "Comments" under the General Information tab and on the Department's website at [Post-Threshold Rate Review Process Diagram.pdf](#).

#### **Payment for External Actuarial Review of Threshold Rate Increase Filings**

CCIO notified the Department on September 21, 2012 that CCIO would award Arizona a grant under a Funding Opportunity Announcement entitled, "Grants to States for Health Insurance Rate Review-Cycle II". During the Rate Review Grant period, (October 1, 2012 to September 30, 2014), the Department will use grant funds to pay the contracted external actuaries for their review services. The Department plans to require health insurers to bear the cost of the actuarial review when the grant period is over.

If you have any questions about this Regulatory Bulletin, please contact Rebecca Donsky ([rdonsky@azinsurance.gov](mailto:rdonsky@azinsurance.gov)) at 602-364-2455